

MAINE STATE HARNESS RACING COMMISSION  
MINUTES OF MEETING  
DECEMBER 14, 2017

Gambling Control Board Conference Room  
Department of Public Safety  
45 Commerce Drive, Augusta, Maine

Commission Members Present: Michael Graham, Chair Pro Tem, Gary Reed, William McFarland, and Michael Timmons

Commission Members Absent: William Varney

Staff Members Present: Ron Guay, AAG, Henry Jennings, Carol Gauthier, Miles Greenleaf, Zachary Matzkin, Dennis May, and Jaime Wood

**1. Call the Meeting to Order and Introductions:** Michael Graham, Chair Pro Tem

**2. Review and Approval of Minutes**

Commissioner McFarland made a motion to approve the minutes of November 8, 2017 as presented and written. Commissioner Reed seconded. Vote 4-0.

**Review and Approval of Decision and Orders**

Commissioner McFarland made a motion to approve the Decision and Order of Gerald Laughlin complaint numbers 2016 MSHRC 22 and 23 as written. Commissioner Reed seconded. Vote 4-0.

Commissioner McFarland made a motion to approve the Decision and Order of Philip Sowers, Jr. complaint numbers 2017 MSHRC 7, 8, and 13 as presented. Commissioner Reed seconded. Vote 4-0.

Commissioner McFarland made a motion to approve the Decision and Order of Allie Hiscock complaint numbers 2017 MSHRC 9, 14, and 15 as written. Commissioner Reed seconded. Vote 4-0.

Commissioner McFarland made a motion to approve the Decision and Order of Gary Wright complaint number 2017 MSHRC 17 as written. Commissioner Reed seconded. Vote 4-0.

Commissioner McFarland made a motion to approve the Decision and Order of Jason Bertolini complaint number 2017 MSHRC 26 as written. Commissioner Reed seconded. Vote 4-0.

Commissioner McFarland made a motion to approve the Decision and Order of Water Case, Jr. Preliminary License Denial as written. Commissioner Reed seconded. Vote 3-1. Commissioner McFarland opposed.

Commissioner McFarland made a motion to approve the Decision and Order for 2018 License Renewals for Off-Track Betting Facilities as written. Commissioner Reed seconded. Vote 4-0.

AAG, Guay explained the process of the two Decision and Orders for Live Racing, Date Assignment and Simulcast for 2018. The department circulated the 2018 calendar as stated at the hearing. There was an objection from HC Bangor regarding the race dates. AAG, Guay circulated this procedural deviation to all of the parties by email that prior to you voting on the decision and order that they would reopen the race date hearing solely for the purpose of you reconsidering whether or not HC Bangor should be awarded June 20<sup>th</sup>. There was a request from HC Bangor regarding the June 20, 2018 race date. Commissioner Timmons made a motion to reopen the race date hearing for the purpose of HC Bangor's request for June 20, 2018. Commissioner Reed seconded. Vote 4-0. AAG, Guay asked if there were any objections. There were none. Michael Hopkins representing HC Bangor requested that they should have June 20<sup>th</sup> to make their total race dates at 44 days. Michael Sweeney stated that the horse supply would not be adequate at that time. He also stated that if the Commission grants June 20<sup>th</sup> to HC Bangor that Scarborough Downs would request to have June 14<sup>th</sup> added. Commissioner Graham asked Ms. Perkins if there were Sire Stake races on that day. Ms. Perkins stated no. AAG, Guay closed the hearing for deliberations. Commissioner Graham stated that it is his opinion that they left those two dates out because of horse supply. He would not be in favor to grant HC Bangor's request. Commissioner McFarland concurs with Commissioner Graham. Commissioner Graham made a motion to deny HC Bangor's request based on horse supply. Commissioner McFarland seconded. Vote 3-1. Commissioner Timmons opposed. AAG, Guay stated that Scarborough's request was conditional so they do not need to take up their additional date. Mr. Sweeney stated that they would withdrew their request. AAG,

Guay stated to Mr. Hopkins that the Commission is going to deny your request without the date June 20th, so the Commission needs to pick one form of the Decision and Order. Mr. Hopkins stated that he was all set with whatever the Commission decides. AAG, Guay stated that they could go with the undisputed decision and order. Commissioner McFarland made a motion to approve the Decision and Order for Pari-mutuel Harness Racing Licenses, Date Assignments for year 2018 and Authorization to Simulcast as presented. Commissioner Timmons seconded. Vote 4-0.

Commissioner Graham stated that there was a request to postpone the rulemaking. Commissioner Timmons made a motion to postpone the rulemaking until after the adjudicatory hearings. Commissioner Reed seconded. Vote 4-0.

### **3. Public Hearing on Agency Rule-making Proposals Covering Proposed Amendments to Commission Rule Chapters 1, 3, 7, 11, 13, 15, and 17**

A Notice of Agency Rule-making Proposal was published on November 22, 2017, in Maine's five daily newspapers. The notice announced that the Department is proposing amendments to Chapters 1, 3, 7, 11, 13, 15, and 17. The public hearing is scheduled for December 14, 2017 and the deadline for written comments is 5:00 p.m. on December 29, 2017. The Commission will take testimony on the proposed amendments. Mr. Jennings asked for testimony. Diann Perkins stated in Chapter 1 there should be definitions on helmets, vest, foot pads, pylon/euro rails, net proof pricing, and pari-mutuel wagering. There was no other testimony. Chapter 3, Section 1, Ms. Perkins stated the wording should read "any race meeting" and not "any race licensed" and in Chapter 3, Section 5, subsection 2.E. this is done electronically. There was no other testimony. Under Chapter 7, Ms. Perkins stated that it should state what is required as a safety vest. She stated that qualifiers should be done twice a week. Mr. Sweeney stated that he would argue against that, it was changed for a reason. It gave the Associations latitude to work with the Maine Breeders Association and the Maine Harness Horsemen's Association to come up with a qualifying schedule that made sense. Mr. Sweeney also stated that twice a week without a reason could be wasteful and expensive. Ms. Perkins stated on page 3 under State Steward's List "G" should read, "has made a break off a qualifying race". She also stated that the well slips are not handled correctly. Right now, the judges get them but they should go to the veterinarian. Mr. Sweeney stated that the committee suggested to do away with the well slips because it's a process that's never been followed. Ms. Perkins stated on page 4, hobbles. They need to talk about this. Under duties of the race secretary, this should be in Chapter 3. Under Substitute Trainer, this should be looked at and the trainer should be in the paddock with the horse. Page 28, handholds. Ms. Perkins stated that you need to do something about the handholds. Page 29, Racing Objections. Ms. Perkins stated that if a driver is upfront, he can't put an objection in because the violation happened behind him. Can't a trainer object. Mr. Sweeney stated that his recommendation would be to allow an appeal to be made by a driver if he had not first filed an objection. Page 30, Section 60, Breaking. Ms. Perkins had a concern there is nothing on extended break. She has seen a horse race the whole stretch while breaking and still not be penalized. Page 34, Section 76, Dashes. Ms. Perkins stated that the word should be "fewer dashes" and not "less dashes". Under Chapter 11, Mr. Jennings stated on page 1 there is a change on the labeling of the product. Chapter 13, page 3 under pari-mutuel wagering, Ms. Perkins suggested putting net pool pricing or international betting because it's coming. Mr. Sweeney stated that it's been here, and they have been dealing with net pool pricing for the last 10 years. It's something that is not going to be regulated by the State of Maine. He doesn't think it's anything that needs to have a definition in our rulebook. Under Chapter 17, Ms. Perkins stated that the judges feel that they need to know about the positives. Mr. Jennings stated that there are due process rights. The judges don't need to know until the positives are adjudicated. Go to page 3. Ms. Perkins stated she has a question on racing days. She just wants you to be aware of this. Commissioner Graham closed the hearing.

### **4. Consideration of the Current Threshold for Testosterone in Mares**

The Department has been investigating three test results which were positive for testosterone in mares. The trainers and owners questioned the validity of the testing and requested further investigation. Dialog with the contract laboratory revealed there is research indicating that a small percentage of mares will have naturally occurring elevated levels of testosterone. Discussions are underway nationally about whether the threshold should be raised. The State Veterinarian will review the current science for the Commission and address the question of whether the Department should hold the three positive tests in abeyance and exercise

enforcement discretion relative to these complaints. Commissioner Graham stated that they need to hear from the state veterinarian. Mr. Jennings stated that he felt this was important to bring before the Commission because there is a lot of concern about cases moving forward expeditiously and making sure none of them get swept under the rug. They have tempted to clarify some of the science around it. Zachary Matzkin gave a recap of where they are. He stated that the department received three positive tests for Testosterone this summer. Soon after those were reported, Dr. Sams from LGC Laboratory notified Dr. Matzkin that there were changes Internationally and in the US that that threshold was most likely going to be raised in the future. What he learned is the threshold that is currently being used in the US 25 pica grams per mil was established by RMTC with a small study of research animals, and it turns out it may be a flawed study. There had been other studies done four or five years ago, on racehorses that showed much more variability to Testosterone. There has been a movement to increase the threshold in mares only to 100 pica grams per mil in plasma or serum. The Europeans have adopted that new threshold as of October. The RMTC is going to bring up this issue in January. It seems unfair to prosecute these cases based on this information. AAG, Guay asked if these cases would be officially dismissed. Mr. Jennings stated that they wanted to see where this is headed and make sure this is going to happen. If this is acted upon in January and is adopted, then we can move to dismiss those cases. Commissioner Graham asked for any other discussion. Commissioner Graham made a motion to hold these three-positive tests in abeyance and exercise enforcement relative to these until ARCI makes new rules. Commissioner McFarland seconded. Vote 4-0.

## 5. **Adjudicatory Hearings:**

- a. **RE: Jocelyn Desfosses, Complaint Number 2017 MSHRC 10.** Mr. Desfosses is alleged to have violated MSHRC Rules Chapter 7 and 11. Mr. Desfosses is the trainer of record for the horse “Reckoning Day”. A blood sample obtained from Reckoning Day following the Sixth Race at Scarborough Downs on June 24, 2017 disclosed the presence of Letrozole. Mr. Desfosses was present and represented by William Childs. The three cases were consolidated. AAG, Guay qualified the Commissioners. Commissioner McFarland recused himself from the proceeding. AAG, Guay asked what the stipulated order would be. Mr. Jennings explained the drug and stated that Letrozole is not classified in the ARCI Guidelines. This drug is used for the treatment of breast cancer. He stated that Mr. Desfosses does have a violation within 365 days depending on what penalty class you put it into. It doesn’t fit well in penalty Class C. You can make strong arguments but Mr. Jennings feels it should be in penalty Class B. He would call it a second and a third violation. Mr. Jennings recommends a 90-day suspension, \$3,500 fine with \$500 suspended and return of all three purses. AAG, Guay stated there is a motion made jointly that the Commission issue a finding of two violations on this date with a \$3500 fine with \$500 suspended, a purse return for every race and a 30-day suspension for the horse “Reckoning Day” and 45 day suspension on the horse “Surf New York” and all days suspended. Commissioner Graham asked for a time length on the purses and fine. Mr. Jennings stated they would move for 30 days from the signed decision and order. AAG, Guay stated that after 30 days the department issues a notice of hearing for suspension 30 days from the decision and order. Commissioner Graham stated that he had a problem with that. Mr. Childs stated that Mr. Desfosses could pay the fine and purses no later than January 15, 2018. AAG, Guay stated that the licensee is stipulating to an amendment to the stipulated order being that notwithstanding the fact that the decision and order will be adopted subsequent to this date that the payment would be made by January 15, 2018. He also informed the licensee that there is no guarantee that the decision and order would be adopted in final form and that he may be making a payment before the decision and order. Does the state agree to the stipulation? Mr. Jennings stated yes. Commissioner Graham made a motion as it was with the stipulation that the payment be made by January 15, 2018. Commissioner Reed seconded. Commissioner Timmons asked that this drug that was used to treat human beings with cancer and what is the drug doing in a racehorse if it is used for cancer. This is a pretty serious business especially in a racehorse. Mr. Childs read an email from Dr. Sams to Mr. Jennings, Mr. Greenleaf, and Dr. Matzkin regarding this drug. This drug is banned in human athletic competition. The findings that we reported to you today is the first report in horses anywhere in the world. Mr. Jennings and Mr. Childs discussed the penalty Class whether it is a Class A, Class B, or Class C and they compromised on a penalty Class B. Commissioner Graham called for a vote on the motion. Vote 3-0. No exhibits were admitted.

- b. **RE: Jocelyn Desfosses, Complaint Number 2017 MSHRC 11.** Mr. Desfosses is alleged to have violated MSHRC Rules Chapter 7 and 11. Mr. Desfosses is the trainer of record for the horse “Surf New York”. A blood sample obtained from Surf New York following the Fourth Race at Scarborough Downs on June 30, 2017 disclosed the presence of Letrozole. See complaint number 2017 MSHRC 10.
- c. **RE: Jocelyn Desfosses, Complaint Number 2017 MSHRC 12.** Mr. Desfosses is alleged to have violated MSHRC Rules Chapter 7 and 11. Mr. Desfosses is the trainer of record for the horse “Surf New York”. A blood sample obtained from Surf New York following the Seventh Race at Bangor Raceway on July 4, 2017 disclosed the presence of Letrozole. See complaint number 2017 MSHRC 10.
- d. **RE: Heidi Gibbs, Complaint Number 2017 MSHRC 29.** Ms. Gibbs is alleged to have violated MSHRC Rules Chapter 7 and 11. Ms. Gibbs is the trainer of record for the horse “Lets Get It All”. A blood sample obtained from Lets Get It All following the First Non-Betting Race at the Skowhegan Fair on August 14, 2017 disclosed an elevated level of Betamethasone. Mr. Jennings asked for a continuance. AAG, Guay approved the continuance.
- e. **RE: James Dunn, Complaint Number 2017 MSHRC 34.** Mr. Dunn is alleged to have violated MSHRC Rules Chapter 7 and 11. Mr. Dunn is the trainer of record for the horse “Well Lets See”. A blood sample obtained from Well Lets See following the Fourth Race at the Windsor Fair on August 27, 2017 disclosed an elevated level of Phenylbutazone. Mr. Dunn was present and represented himself. AAG, Guay gave Mr. Dunn his oath and opened the proceeding. He also qualified the Commissioners for both hearings. Mr. Jennings presented the following exhibits for admission. Exhibit 1, Notice of Hearing; Exhibit 2, Owner/Driver/Trainer’s License Application; Exhibit 3, Race Program; Exhibit 4, Notice of Positive Test; Exhibit 5, HRC Sample Tag; Exhibit 6, Sample Shipment Sheet; Exhibit 7, LGC Certificate of Analysis; Exhibit 8, DNA Test Result; Exhibit 9, Laboratory Split Test; and Exhibit 10, ARCI Guidelines. AAG, Guay stated they would do two separate hearings. He admitted the exhibits for complaint number 2017 MSHRC 34 without objection. AAG, Guay asked Mr. Dunn if he agrees to being the trainer of record for the horse Well Lets See and that the horse raced during the 4<sup>th</sup> race at the Windsor Fair on August 27, 2017. Mr. Dunn stated yes. AAG, Guay asked Mr. Dunn if he agrees to the horse “Well Lets See” had an elevated level of Phenylbutazone on August 27, 2017. Mr. Dunn stated that he didn’t agree. AAG, Guay asked Mr. Dunn if he had any exhibits. Mr. Dunn stated they are emails from Mr. Greenleaf and Dr. Matzkin. AAG, Guay asked Mr. Jennings if he had any objections to the emails. Mr. Jennings stated no. AAG, Guay labeled the Exhibit as Licensee 1. Mr. Jennings stated that Mr. Dunn had a split sample and a DNA test done. The states position is that there was a confirmation from the lab that did the split sample. Mr. Dunn stated that he received a call from Mr. Greenleaf regarding an elevated Phenylbutazone on two horses. It took him off guard. Mr. Dunn checked that because he does use the drug and it’s a powdered substance. He has used it for 35 years. He also had other horses in to race and those horses were treated exactly the same way that these two horses were treated. He contacted the racing office to scratch the horse. Mr. Dunn had a veterinarian come to his barn because of the level. The level was eight times over the legal limit. He had a sample of blood taken from the horse that was scratched at Farmington and sent to Cornell University, and that test came back way below the threshold. How does this happen with two horses that race on the same day but at 48 hours over his vet stated that he is definitely within the range. He thought maybe the samples were contaminated. Mr. Dunn asked Mr. Greenleaf for the chain of custody for his samples which he did receive. The only part of the chain of custody he did not receive is from Windsor, Maine to Augusta, Maine. Mr. Greenleaf stated that is something that does not exist. Mr. Dunn asked if there was a chance that these samples were contaminated. Mr. Jennings stated to Mr. Dunn that he is suggesting that the samples were somehow contaminated. Mr. Dunn stated that he is not pointing fingers at any one. If we do not have a paper trail on these samples, then yes there is a one in one million chance they were contaminated. Commissioner McFarland stated that this dose was eight times over. Mr. Dunn stated that one of his test was 26. AAG, Guay asked Mr. Dunn if the horses eat out of the same bucket. Mr. Dunn stated no. Mr. Jennings called Dr. Matzkin. AAG,

Guay gave Dr. Matzkin his oath. Mr. Jennings asked questions of Dr. Matzkin. Dr. Matzkin stated that the tubes are collected and stored at the steward's office in the refrigerator. Once collected the sample is sealed in front of the trainer that is what the card signing is about. It is a tamper proof tape that is very difficult to remove without destroying the piece of tape. Mr. Dunn objected. AAG, Guay asked what the basis is. Mr. Dunn has never seen the veterinarian place tape over the tube. AAG, Guay stated that he is going to be allowed to testify. Dr. Matzkin can continue. Dr. Matzkin stated that there is no supply of Phenylbutazone in the testing area. Mr. Jennings called Jaime Wood. AAG, Guay gave Ms. Wood her oath. Mr. Jennings asked questions of Ms. Wood. Ms. Wood worked at Windsor Fair on August 27, 2017. She drew the blood on the date in question. She explained the process of the collection of blood and stickering of the tube. Mr. Dunn asked Ms. Woods, how do you sticker the tubes? Ms. Woods takes the number off the paper and places it on the tube. She takes the tube to the office to seal the top. Commissioner Graham stated that Mr. Dunn signed the card as a witness but he didn't sign witnessing the top of the tube being sealed. Ms. Woods stated technically no. Commissioner Graham stated to Mr. Jennings that maybe he should change the policy. Mr. Jennings asked Ms. Woods if Mr. Dunn ask to see the evidence tape applied to the tube. Ms. Woods stated no he did not. Mr. Dunn asked how many times has a trainer or groom actually witnessed you putting tape over the top of the tube. Ms. Woods didn't know the answer to that. Mr. Dunn asked Ms. Woods if that has ever happened. Ms. Woods stated yes trainers have seen that process being done. Mr. Dunn asked if she has ever been asked to look at the states policy or procedure on how to handle vials of blood for the Commission at racetracks. Ms. Woods stated given that there is no written policy she would say no, but there is a procedure that is strictly followed. AAG, Guay asked Mr. Jennings if he had any other witnesses. Mr. Jennings stated no. Commissioner Timmons asked Mr. Dunn if he administered bute before the race. Mr. Dunn stated no. He administered the bute 48 hours out. AAG, Guay asked for closing argument. Mr. Jennings stated that clearly something happened that Mr. Dunn can't understand so he is grasping at straws to try to figure out what happened. What he sees is that the samples are collected and immediately the top is already on the tube and when the technician goes back to the state testing area the evidence tape goes on. In order for someone to be able to get at these samples, it would be very difficult. Mr. Dunn stated that the state cannot prove that they have a policy or procedure on how they collect blood samples from post-race horses. They cannot provide any documentation of where that bute was stored, when it was stored or when it was taken. He is asking this Commission to look at his training record and track record. This is the first time he has been in here since 1996. With the level these horses had in their system and they raced every seven days that these samples weren't tainted. AAG, Guay closed the hearing for deliberations. Mr. Dunn asked if they can put them together. AAG, Guay asked if there is any different theory for your defense from the first one. Mr. Dunn stated no. Mr. Jennings did not object to combine the cases. AAG, Guay stated that the exhibits need to be admitted. Mr. Jennings presented the following exhibits for complaint number 2017 MSHRC 35. Exhibit 1, Notice of Hearing; Exhibit 2, Owner/Driver/Trainer's License Application; Exhibit 3, Race Program; Exhibit 4, Notice of Positive Test; Exhibit 5, HRC Sample Tag; Exhibit 6, Sample Shipment Sheet; Exhibit 7, LGC Certificate of Analysis; Exhibit 8, DNA Test Results; Exhibit 9, Laboratory Split Sample Confirmation; and Exhibit 10, ARCI Guidelines. AAG, Guay admitted the exhibits without object. He asked Mr. Dunn if he admits to being the trainer of record of the horse "JJs Jet" and that the horse raced in the ninth race at Windsor Fair on August 27, 2017. Mr. Dunn stated yes. AAG, Guay asked if anyone wants to say anything in this case. Hearing none. He closed the hearing for deliberations. Commission Graham asked for discussion. He stated that it is highly unlikely that someone gave your horse the substance. Commission McFarland agrees with Commission Graham. Commissioner McFarland made a motion that there is a violation in both cases. Commissioner Reed seconded. Vote 4-0. Mr. Jennings recommends penalty Class C. Mr. Dunn stated that based on the evidence and the state for what they have done in the past. He hasn't got his warning yet and to combine this as one test and give him a warning. Commissioner Graham made a motion to combine as one and loss of purse. There was no second. Motion failed. Commissioner McFarland wanted some discussion with other Commissioners. Commissioner Graham stated that he is guilty as a trainer. Commissioner McFarland stated that the minimum penalty is a little bit low. Mr. Dunn stated that he spent money on both cases to prove his innocent by having two split samples and DNA testing. Commissioner Timmons made a motion for a \$750 fine, 15-day suspension and return of purse for both cases.

Commissioner Reed seconded. Vote 4-0. Commissioner Graham amended the suspension to start on Monday, December 18, 2017. Commissioner McFarland seconded. Vote 4-0.

- f. **RE: James Dunn, Complaint Number 2017 MSHRC 35.** Mr. Dunn is alleged to have violated MSHRC Rules Chapter 7 and 11. Mr. Dunn is the trainer of record for the horse “JJs Jet”. A blood sample obtained from JJs Jet following the Ninth Race at the Windsor Fair on August 27, 2017 disclosed an elevated level of Phenylbutazone. See complaint number 2017 MSHRC 35.
- g. **RE: Jamie Gerard, Complaint Number 2017 MSHRC 38.** Mr. Gerard is alleged to have violated MSHRC Rules Chapter 7 and 11. Mr. Gerard is the trainer of record for the horse “Alternat Thursdays”. A blood sample obtained from Alternat Thursdays following the Fifth Race at the Oxford Fair on September 16, 2017 disclosed elevated levels of Phenylbutazone and Flunixin. Mr. Jennings stated that this case has been resolved.
- h. **RE: Nicholas Graffam, Complaint Number 2017 MSHRC 39.** Mr. Graffam is appealing the October 4, 2017 judges’ decision regarding Mr. Graffam’s allegation of interference during the First Non-Betting Race at the Fryeburg Fair. Commissioner Reed left at this point. Mr. Graffam was present and represented himself. AAG, Guay qualified the Commissioners. Mr. Jennings presented the following exhibits for admission. Exhibit 1, Notice of Hearing; Exhibit 2, Owner/Driver/Trainer’s License Application; Exhibit 3, Race Program; Exhibit 4, MHRC Judges Notice of Hearing; Exhibit 5, MHRC Judge’s Decision; Exhibit 6, MHRC Appeal Form; Exhibit 7, Excerpt from Chapter 7, Section 54, and Exhibit 8, DVD of Race. AAG, Guay stated that there were no objections to the exhibits being admitted. Mr. Graffam had no exhibits. Mr. Jennings called Roger Smith, Jr. AAG, Guay gave Mr. Smith his oath. Mr. Jennings asked questions of Mr. Smith. Mr. Smith explained his view of the race. He did not take a position. Mr. Jennings called Ronald Merrill. AAG, Guay gave Mr. Merrill his oath. Mr. Jennings asked questions of Mr. Merrill. Mr. Merrill explained his view of the race. He thought it was a clean race. Mr. Jennings called Norman Foss. AAG, Guay gave Mr. Foss his oath. Mr. Jennings asked questions of Mr. Foss. Mr. Foss explained his view of the race. He didn’t see any horse carried potentially wide. AAG, Guay gave Nicholas Graffam his oath. Mr. Graffam stated that coming around at the 5/8 turn at Fryeburg Mr. Athearn pulled out of the 2 hole which caused his horse to go out 3 deep off the back side going to the 3/4 pole and he feels that cost him the race. Commissioner Timmons stated from Mr. Graffam’s written note Mr. Graffam stated that his tire came into his horse’s front legs. Mr. Graffam stated that Mr. Athearn never hit his horses front feet because he moved his horse out so the horse wouldn’t get hurt. At this time, they watched the video. Both judges stated that they did not see any interference. Mr. Graffam explained while watching the video that his horse’s feet were already past Mr. Athearn’s horses wheel. That’s why Mr. Graffam moved out so his horse wouldn’t get hurt. AAG, Guay closed the hearing for deliberations. After a brief discussion, Commissioner Timmons made a motion that there was interference. Commissioner McFarland stated based on what Mr. Graffam read in the rulebook and how it should be applied or looked at he seconded the motion. Vote 3-0. AAG, Guay stated that the appeal is granted.
- i. **RE: Michael Cayouette, Complaint Number 2017 MSHRC 40.** Mr. Cayouette is alleged to have violated MSHRC Rules Chapter 7 and 11. Mr. Cayouette is the trainer of record for the horse “Sachertorte”. A blood sample obtained from Sachertorte following the Tenth Race at the Fryeburg Fair on October 3, 2017 disclosed an elevated level of Caffeine. Mr. Cayouette was present and representing himself. AAG, Guay stated to Mr. Cayouette that he waived his right to a first hearing in terms of the violations for complaint numbers 2017 MSHRC 40, 41, 42, 43, 46, and 47. Mr. Cayouette stated yes. AAG, Guay stated to Mr. Cayouette that by doing so he waives his right to challenge whether or not the violation occurs or not and he is aware of that, correct. Mr. Cayouette stated yes. AAG, Guay stated by doing so there is no indication you will receive a lesser penalty. Mr. Cayouette stated yes. AAG, Guay qualified the Commissioners. Mr. Jennings moved for the submission all six complaints. He presented the following exhibits. Exhibit 1, Notice of Hearing; Exhibit 2, Owner/Driver/Trainer Application; Exhibit 3, Race Program; Exhibit 4, Notice of Positive Test; Exhibit 5, HRC Sample Tag; Exhibit 6, Sample Shipment Sheet; Exhibit 7, LGC Certificate of Analysis; and Exhibit 8, ARCI Guidelines. AAG, Guay admitted the exhibits. Mr.

Jennings stated that the supplement he was using contained Caffeine. Under the ARCI Guidelines, this drug is classified as penalty Class B. Mr. Cayouette stated that he bought the GNC product at Rite Aid and he thought he read all the ingredients, but there were other ingredients listed on the product. He probably would have had more positives but he ran out of the product before Mr. Greenleaf called. Mr. Jennings stated that all purses are to be returned. AAG, Guay asked on the Cobalt cases a similar argument if the state disagreed with the Commissions treatment of not issuing a penalty for each violation. Was that something that the state had recommended in that case. Mr. Jennings stated what he believed happened with the Cobalt cases is that the state provided information to the Commission that would show how the fines and suspensions would add up and consider each one as a separate violation. AAG, Guay stated that means you didn't. In terms of precedence, the department has never taken that position it was something the Commissioners did previously. Mr. Jennings stated that he thinks that is an accurate statement. Commissioner Graham asked if any of the horses have raced since then. Mr. Cayouette stated yes. No positives. AAG, Guay closed the hearing for deliberations. Commissioner Timmons stated that they have been tested and no positives. Commissioner Graham stated that the purses should be returned. He questions whether they should be finding six separate violations in a very short period of time. He is not sure they should zonk him to the extent if it was over a greater period of time. Commissioner McFarland stated to Mr. Cayouette that the horses raced and were they tested again. Mr. Cayouette stated yes. Commissioner Graham asked if anyone wanted to make a motion. Commissioner Graham made a motion to combine as all one thing. Return of purse on all six cases, a 15 day suspension, and fine of \$500 fine for all six. AAG, Guay stated that if Mr. Cayouette were to have another violation do these six as far as counting do these six count as one or six violations. Commissioner Graham stated his motion would be one. Commissioner Timmons asked about other violations other than the State of Maine. Can we discussion because it is out of state. AAG, Guay stated that he would reopen the hearing for additional testimony. Commissioner Timmons asked Mr. Cayouette if he had any test out of state. Mr. Cayouette stated that during this same time period he had two positives at Plainridge Park for the same substance. Commissioner Timmons asked if they were before. Mr. Cayouette stated they were within those same dates as these are. AAG, Guay closed the evidentiary hearing. Commissioner Graham asked for a second to that motion. Commissioner Reed seconded. Vote 3-1. Commissioner Timmons opposed. Commissioner McFarland stated there was no stipulation on return of purse time limit. Commissioner Graham stated within 30 days of the decision and order.

- j. **RE: Michael Cayouette, Complaint Number 2017 MSHRC 41.** Mr. Cayouette is alleged to have violated MSHRC Rules Chapter 7 and 11. Mr. Cayouette is the trainer of record for the horse "Wild Lady Luck". A blood sample obtained from Wild Lady Luck following the Tenth Race at the Fryeburg Fair on October 4, 2017 disclosed an elevated level of Caffeine. See complaint number 2017 MSHRC 40.
- k. **RE: Michael Cayouette, Complaint Number 2017 MSHRC 42.** Mr. Cayouette is alleged to have violated MSHRC Rules Chapter 7 and 11. Mr. Cayouette is the trainer of record for the horse "Sachertorte". A blood sample obtained from Sachertorte following the Eighth Race at Bangor Raceway on October 11, 2017 disclosed an elevated level of Caffeine. See complaint number 2017 MSHRC 40.
- l. **RE: Michael Cayouette, Complaint Number 2017 MSHRC 43.** Mr. Cayouette is alleged to have violated MSHRC Rules Chapter 7 and 11. Mr. Cayouette is the trainer of record for the horse "Reagans Revenge". A blood sample obtained from Reagans Revenge following the Second Race at Bangor Raceway on October 13, 2017 disclosed an elevated level of Caffeine. See complaint number 2017 MSHRC 40.
- m. **RE: Michael Cayouette, Complaint Number 2017 MSHRC 46.** Mr. Cayouette is alleged to have violated MSHRC Rules Chapter 7 and 11. Mr. Cayouette is the trainer of record for the horse "Buckeye Baddler". A blood sample obtained from Buckeye Baddler following the Fourth Race at Bangor Raceway on October 20, 2017 disclosed an elevated level of Caffeine. See complaint number 2017 MSHRC 40.

- n. **RE: Michael Cayouette, Complaint Number 2017 MSHRC 47.** Mr. Cayouette is alleged to have violated MSHRC Rules Chapter 7 and 11. Mr. Cayouette is the trainer of record for the horse “Wild Lady Luck”. A blood sample obtained from Wild Lady Luck following the Fifth Race at Bangor Raceway on October 20, 2017 disclosed an elevated level of Caffeine. See complaint number 2017 MSHRC 40.

**6. Other business:**

1. Consideration of ARCI Annual Membership renewal.  
Mr. Jennings explained the process of the renewal. Commissioner Graham asked if they could postpone this item to the next meeting and do some research on it.
2. Approval of the Maine Standardbred Breeders Sire Stakes Race Dates.  
Commissioner Graham stated that he is looking for approval of the Maine Sire Stakes race dates. Wendy Ireland presented the sire stakes schedule. At their meeting, they decided to start the 2 year olds later in the year and finish later too. She stated that the 3 year old consolation finals will be October 16, 2018 at Bangor Raceway post time 5:00 p.m. Commissioner Graham asked for a motion. Commissioner Timmons made a motion to approve the Maine Sire Stakes Schedule as presented. Commissioner McFarland seconded. Vote 3-0.
3. Discussion of policies relating to licensing.  
Mr. Jennings stated that they can table this item to the January meeting.
4. Mr. Jennings stated that Mr. Sweeney wanted to ask the Commission about a piece of Chapter 7, Section 6, Subsection 2, page 2 regarding a satisfactory qualifying line within the last 45 days. Mr. Sweeney stated some years ago, the Commission changed this rule to allow the Commission the latitude to modify this rule without going into emergency rulemaking. In years past, they have waived this 45 day rule and with the horse population that we are anticipating when they open up this year, Scarborough feels they will be in a tough situation in order to be able to card full fields; and to make it easier on the horsemen getting their horses ready to come to the races without having to qualify first. They would like to ask the Commission to modify this rule. Basically, what they have done in years’ past is create a rolling 45 day rule which takes out of consideration all the period between closing day of 2017 meet and opening day of the 2018 meet, so on March 24 when they open up next year it would be the same as looking at a charted line that occurred 45 days from December 10<sup>th</sup> when they closed. AAG, Guay asked Mr. Sweeney to be clear that he is not asking for a rule change but to modify the requirement for next year. Mr. Sweeney stated yes. AAG, Guay stated to the Commissioners that Scarborough is asking for a modification requirement. Commissioner McFarland made a motion to allow the modification of the qualifying races to be changed for 2018. Commissioner Timmons seconded. Vote 3-0.

**7. Public Comment**

Ms. Perkins addressed the Commission regarding the positive test that effects the Sire Stakes races in order to get the yearbook out. AAG, Guay stated that normally they have accelerated everything that they could if it effects the raking of the Sire Stakes, the department would move the hearings up but this is the first time we haven’t been able to.

**8. Schedule of Future Meetings:**

January 17, 2018

**9. Adjourn**

3:30 p.m.